

Floyd W. Bybee, #012651
BYBEE LAW CENTER, PLC
4445 E. Holmes Avenue
Suite 107
Mesa, AZ 85206-3398
Office: (480) 756-8822
Fax: (480) 302-4186
floyd@bybeelaw.com

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Arthur Cathcart, III;

No.

Plaintiff,

COMPLAINT

v.

Midland Credit Management,
Inc.; and
Burse & Associates, P.C.;

Defendants.

(Jury Trial Demanded)

Plaintiff alleges as follows:

I. Preliminary Statement

1. Plaintiff brings this action for damages based upon Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. (hereinafter "FDCPA"). In the course of attempting

1 to collect a debt allegedly owed by Plaintiff,
2 Defendants engaged in a campaign of deceptive,
3 unfair and abusive debt collection practices in
4 violation of the FDCPA. Plaintiff seeks to recover
5 actual damages, and statutory damages, as well as
6 reasonable attorney's fees and costs.

7 **II. Statutory Structure of FDCPA**

8 2. Congress passed the FDCPA to eliminate abusive debt
9 collection practices by debt collectors, to insure
10 that those debt collectors who refrain from using
11 abusive debt collection practices are not
12 competitively disadvantaged, and to promote
13 consistent state action to protect consumers against
14 debt collection abuses. FDCPA § 1692.

15 3. The FDCPA is designed to protect consumers who have
16 been victimized by unscrupulous debt collectors
17 regardless of whether a valid debt exists. Baker v.
18 G.C. Services Corp., 677 F.2d 775, 777 (9th Cir.
19 1982).

20 4. The FDCPA defines a "consumer" as any natural person
21 obligated or allegedly obligated to pay any debt.
22 FDCPA § 1692a(3).

23 5. The FDCPA defines "debt" as any obligation or
24 alleged obligation of a consumer to pay money
25 arising out of a transaction in which the money,

1 property, insurance, or services which are the
2 subject or the transaction are primarily for
3 personal, family, or household purposes. FDCPA §
4 1692a(5).

5 6. The FDCPA defines "debt collector" as any person
6 who uses any instrumentality of interstate commerce
7 or the mails in any business the principal purpose
8 of which is the collection of any debts, or who
9 regularly collects or attempts to collect, directly
10 or indirectly, debts owed or due or asserted to be
11 owed or due to another. FDCPA § 1692a(6).

12 7. Any debt collector who fails to comply with the
13 provisions of the FDCPA is liable for any actual
14 damage sustained; statutory damages up to \$1,000;
15 attorney's fees as determined by the Court and costs
16 of the action. FDCPA § 1692k.

17 **III. Jurisdiction**

18 8. Jurisdiction of the Court over this action and the
19 parties herein, arises under 15 U.S.C. § 1692k(d)
20 (FDCPA), and 28 U.S.C. §1337. Venue lies in the
21 Phoenix Division of the District of Arizona as
22 Plaintiff's claims arose from acts of the Defendants
23 perpetrated therein.

24 **IV. Parties**

25 9. Plaintiff is an individual residing in Maricopa

1 County, Arizona.

2 10. Plaintiff is allegedly obligated to pay a consumer
3 debt.

4 11. Plaintiff is a "consumer" as that term is defined by
5 FDCPA § 1692a(3).

6 12. Defendant Midland Credit Management, Inc.
7 ("Midland") is a Kansas corporation doing business
8 within the State of Arizona.

9 13. Midland regularly collects or attempts to collect
10 debts owed or asserted to be owed or due another.

11 14. In the alternative, Midland regularly collects or
12 attempts to collect debts which it has purchased
13 after default.

14 15. Midland is licensed as a collection agency by the
15 Arizona Department of Financial Institutions,
16 license number 0905285.

17 16. Midland is a "debt collector" as that term is
18 defined by FDCPA § 1692a(6).

19 17. Defendant Bursey & Associates, P.C. ("Bursey") is an
20 Arizona professional corporation registered and
21 doing business in the State of Arizona as a law
22 firm.

23 18. Bursey regularly collects or attempts to collect
24 debts owed or asserted to be owed or due another.

25 19. Bursey is a "debt collector" as defined by FDCPA

1 §1692a(6) .

2 20. At all times relevant herein, Bursey was acting on
3 behalf of and as an agent for Midland.

4 **V. Factual Allegations**

5 21. Plaintiff opened a credit card account through HSBC
6 Bank which was used for personal, family, and
7 household purposes.

8 22. In or about October 2002, Plaintiff disputed various
9 charges made to his HSBC account.

10 23. As a compromise to settle the undisputed charges,
11 Plaintiff paid HSBC \$300.00 on October 31, 2002.

12 24. Plaintiff made no further payments to HSBC on the
13 account.

14 25. If there was balance owing on the HSBC account,
15 which Plaintiff disputes, then the account would
16 have become delinquent no later than November 2002.

17 26. Plaintiff was scheduled to be deployed to Iraq in
18 September 2004, and was instructed to settle all
19 business matters before deployment.

20 27. Plaintiff contacted all his creditors in September
21 2004, including HSBC, and HSBC stated that the
22 account was closed and did not indicate that there
23 was any balance owed or due on the account.

24 28. Upon information and belief, subsequent to making
25 his last payment on the HSBC account on October 31,

1 2002, HSBC sold the alleged debt to Atlantic Credit.

2 29. Upon information and belief, Midland Funding, LLC
3 later acquired the alleged HSBC debt.

4 30. Upon information and belief, Midland Funding, LLC
5 subsequently sold the alleged HSBC debt to Defendant
6 Midland.

7 31. In or about April 2009, Midland assigned the alleged
8 HSBC debt to Bursey for collection purposes.

9 32. Bursey sent an initial letter to Plaintiff dated
10 April 20, 2009 concerning the Midland debt. A copy
11 of the letter is attached hereto as Exhibit A.

12 33. Exhibit A was the first communication from Bursey to
13 Plaintiff concerning the HSBC debt.

14 34. In its initial letter to Plaintiff, Bursey does not
15 identify the origin of the debt, or identify the
16 debt by a HSBC account number.

17 35. Bursey represents in Exhibit A that the amount owed
18 to Midland is \$11,217.67 including interest through
19 April 20, 2009.

20 36. After receiving Exhibit A, Plaintiff sent a letter
21 to Bursey on May 16, 2009 disputing the alleged debt
22 and requesting verification of the debt, and
23 identification of the original creditor.

24 37. Bursey sent Plaintiff a second letter dated May 26,
25 2009. A copy of this letter is attached hereto as

Exhibit B.

38. Bursey identifies in Exhibit B that the original creditor was Household Bank.

39. Bursey states in Exhibit B, that the letter is regarding a matter with the "Maricopa County Justice Court."

40. When Plaintiff received Exhibit B, and because of the reference to the "Maricopa County Justice Court," he believed that he had been sued on the HSBC debt.

41. Bursey also states in Exhibit B that "I have verified that the amount of this debt is currently \$11,290.36. This amount includes the outstanding principal balance of \$7,369.42, plus accruing interest from the date of default January 31, 2004 at the rate of ten and 0/100 per year. Please find enclosed documentation from my client regarding this debt"

42. The only documentation attached to Exhibit B is the Affidavit of Judy Richter, a "Specialist and [] custodian of records for Midland Credit Management, Inc." A copy of the Affidavit of Judy Richter is attached hereto as Exhibit C.

43. Ms. Richter states in her affidavit, and under penalty of perjury on behalf of Midland, that "The

1 account shows that the defendant(s) owed a balance
2 of \$7369.42 as of 2009-04-20."

3 44. Exhibit C is the first communication from Midland to
4 Plaintiff concerning the HSBC account.

5 45. On June 5, 2009 Plaintiff sent a letter directly to
6 Midland requesting verification of the alleged debt
7 it was attempting to collect.

8 46. The June 5, 2009 letter was sent to Midland at the
9 address provided by Arizona Department of Financial
10 Institutions, but was subsequently returned as
11 undeliverable.

12 47. Plaintiff sent a second letter on June 13, 2009 to
13 Midland to the Phoenix, Arizona address and also to
14 Midland's address in San Diego, California. A copy
15 of this letter is attached hereto as Exhibit E.

16 48. Plaintiff requested in his letter to Midland,
17 pursuant to Arizona Administrative Code Section R-
18 20-4-1514, which all collection agencies licensed in
19 Arizona are subject to, that Midland provide "copies
20 of all documents in your 'books and records
21 concerning the debtor or the debt.'"

22 49. Plaintiff also requested in his letter to Midland,
23 pursuant to Arizona Administrative Code Section R-4-
24 1521, "copies of all evidence of the debt."

25 50. Plaintiff has not received any response from Midland

1 to Plaintiff's request for documentation or
2 verification concerning the HSBC debt.

3 51. On May 28, 2009, Plaintiff telephoned Bursey's
4 office and spoke with a collector named "Barbara
5 Barnett."

6 52. Plaintiff and his fiancé asked Barnett for
7 information concerning the HSBC debt, but was told
8 that "we are not going through this, you can request
9 that in the law suit. . ." and "when the law suit is
10 filed you can request that."

11 53. On June 3, 2009, Plaintiff called Midland and asked
12 that Midland provide information concerning the
13 alleged debt.

14 54. Midland refused to give Plaintiff any information,
15 and said that he needed to contact Bursey's office.

16 55. Plaintiff then telephoned Bursey and spoke with a
17 collector.

18 56. During this conversation, the collector stated that
19 Bursey will proceed with a lawsuit, and when asked
20 whether a suit had been filed, stated "definitely."

21 57. The collector also stated that the date of contract
22 was March 30, 2000, and that default occurred on
23 January 31, 2004.

24 58. When the 2004 default date was disputed, the
25 collector stated that "they probably carried in that

1 long before they closed it out."

2 59. The collector also stated that any disputes
3 concerning the date the account defaulted would have
4 to be made to HSBC.

5 60. The collector also stated that "I'm not going to
6 argue with you like my co-worker did Friday. It is
7 a lawsuit, we are seeking judgment. At that time we
8 will find your employer and send it to garnishment."

9 61. At the time Defendants threatened to file a lawsuit,
10 the debt was stale and beyond the applicable statute
11 of limitations.

12 62. As a result of Defendants' actions as outlined
13 above, Plaintiff has suffered actual damages
14 including, but not limited to, out of pocket
15 expenses, loss of credit opportunity, embarrassment,
16 humiliation, anger, and other emotional distress.

17 63. Defendants' actions as outlined above were
18 intentional, willful, and in gross or reckless
19 disregard of Plaintiff's rights and part of their
20 persistent and routine practice of debt collection.

21 64. In the alternative, Defendants' actions were
22 negligent.

23 **VI. Causes of Action**

24 **a. Fair Debt Collection Practices Act**

25 65. Plaintiff repeats, realleges, and incorporates by

reference the foregoing paragraphs.

66. Defendants' violations of the FDCPA include, but are not necessarily limited to, 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(4), 1692e(5), 1692e(10), 1692f(1), and 1692g.

67. As a direct result and proximate cause of Defendants' actions in violation of the FDCPA, Plaintiff has suffered actual damages.

VII. Demand for Jury Trial

Plaintiff hereby demands a jury trial on all issues so triable.

VIII. Prayer for Relief

WHEREFORE, Plaintiff requests that judgment be entered against Defendants for:

- a) Statutory damages of \$1,000 per Defendant, pursuant to §1692k;
- b) Actual damages in an amount to be determined by trial;
- c) Costs and reasonable attorney's fees pursuant to §1692k; and
- d) Such other relief as may be just and proper.

1
2 DATED July 10, 2009.
3

4 s/ Floyd W. Bybee
5 Floyd W. Bybee, #012651
6 **BYBEE LAW CENTER, PLC**
7 4445 E. Holmes Avenue
8 Suite 107
9 Mesa, AZ 85206-3398
10 Office: (480) 756-8822
11 Fax: (480) 302-4186
12 floyd@bybeelaw.com
13
14
15
16
17
18
19
20
21
22
23
24
25

Attorney for Plaintiff